UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/710,922	12/11/2012	Germán BLANCO	0076412-000092	6287

21839   7590   03/03/2017
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POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER
GREGG, MARY M

ART UNIT	PAPER NUMBER
3694	

NOTIFICATION DATE	DELIVERY MODE
03/03/2017	ELECTRONIC

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte GERMÁN BLANCO, COLIN TANNER,
and THERESA L. SMITH

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Appeal 2015-004472
Application 13/710,922
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and
BRADLEY B. BAYAT *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final
rejection of claims 1–30 which are all the claims pending in the application.
We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFRIM.

THE INVENTION

The Appellants' claimed invention is directed to the initiation and processing of a consumer experience using a mobile communication device. (Spec. para. 1). Claims 1 and 9, reproduced below with numbering in brackets added, are illustrative of the subject matter on appeal.

1. A method for funding and sharing a consumer experience, comprising:
    [1]   reading, by a reading device, a machine-readable code encoded with at least a location identifier;
    [2]   decoding, by a decoding device, the machine-readable code to obtain the encoded location identifier;
    [3]   transmitting, by a transmitting device, the location identifier to a server;
    [4]   receiving, by a receiving device, transaction details for a financial transaction to be processed, wherein the transaction details include at least a transaction amount;
    [5]   displaying, by a display device, the transaction details for the financial transaction to be processed to a consumer;
    [6]   receiving, by an input device, an indication of selected transaction options;
    [7]   transmitting, by the transmitting device, the selected transaction options for processing of the financial transaction;
    [8]   receiving, by the receiving device, an indication of approval of the financial transaction; and
    [9]   displaying, by the display device, a prompt to the consumer to share experience information with at least one social network.

9. A method for distributing content during an ongoing transaction, comprising:
    [1]   storing, in a database, transaction details for a financial transaction to be processed,
    [2]   wherein the transaction details include at least a transaction identifier, a transaction amount, and a stage identifier;

[3]   receiving, by a receiving device, a request for content, wherein the request for content includes at least a transaction identification;

[4]   identifying, in the database, specific transaction details where the included transaction identifier corresponds to the transaction identification;

[5]   transmitting, by a transmitting device, content to be received by a mobile communication device, wherein the content is based on the stage identifier included in the specific transaction details, and wherein, if the stage identifier indicates that the financial transaction is to be processed, the content includes at least the transaction amount included in the specific transaction details; and

[6]   receiving, by the receiving device, an indication of approval of the financial transaction.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Elliott	US 2010/0262554 A1	Oct. 14, 2010
White	US 2010/0320266 A1	Dec. 23, 2010
Laracey	US 2011/0251892 A1	Oct. 13, 2011
Priebatsch	US 2012/0232972 A1	Sept. 13, 2012

Allan Hoffman, *QR codes bring 'quick response' links using smartphone barcode apps*, NJ.com [http://www.nj.com/business/index.ssf/2010/ 1O/qr_codes_bring_quick_response.html[12/27/2013 5:23:45 PM]] (2010) (hereinafter "Hoffman").

The following rejections are before us for review:

1.   Claims 1–30 stand rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter.

2.   Claims 9, 12, 14, 15, 24, 27, 29, and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Elliot.

3.   Claims 1, 2, 4–6, and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and Priebatsch.

4.   Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot, Priebatsch, and Hoffman.

5.   Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot, Priebatsch, and Laracey.

6.   Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and White.

7.   Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and Priebatsch.

8.   Claims 16, 17, 19–21, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and Priebatsch.

9.   Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot, Priebatsch, and Hoffman.

10.   Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and White.

11.   Claim 28 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elliot and Priebatsch.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence[1].

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claims 1–30 is improper because the Examiner did not separately address the recitations of independent claims 9 and 24 (Reply Br. 2–3). The Appellants also argue that the claims are not directed to an abstract idea and do not preempt an abstract idea and that the claims are directed to significantly more than an abstract idea (*id.* at 5–8). According to the Appellants, the claimed invention is similar to the claims found patent eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) and *SiRF Technology Inc. v. International Trade Commission*, 601 F.3d 1319 (Fed. Cir. 2010) (Reply Br. 8–11).

In contrast, the Examiner has determined that the rejection of record is proper (Ans. 1–3).

We agree with the Examiner.

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: "[l]aws of nature, natural phenomena, and

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[1] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

abstract ideas are not patentable." *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claims fall within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo. Alice. Id. at 2355* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296-97 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. If so, we then consider the elements of the claim both individually and as "an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application of the abstract idea. *Id.* This is a search for an "inventive concept," i.e., an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.*

Here, we determine that claim 1 is directed to the concept of processing and authenticating transaction details and sharing consumer experiences. These are fundamental economic practices long prevalent in our system of commerce, and an abstract idea beyond the scope of § 101.

We note the point about pre-emption. Reply Br. 5–8. While pre-emption "might tend to impede innovation more than it would tend to promote it, 'thereby thwarting the primary object of the patent laws'" (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012)), "the absence of complete preemption does not demonstrate patent eligibility" (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). *See also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir.), cert, denied,

136 S. Ct. 701, 193 (2015)("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

We next consider whether additional elements both individually and as ordered combination transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Claim 1 recites a method for funding and sharing a consumer experience using conventional components, namely a "reading device," "decoding device," "transmitting device," "receiving device," "display device," and "input device." The Specification supports the view that each of these components is conventional. *See, e.g.,* Spec. para. 24 ("mobile device 110 . . . may be any type of mobile communication device suitable for performing the functions disclosed herein as will be apparent to persons having skill in the relevant art, such as a cellular phone, smart phone, tablet computer, netbook computer, laptop computer, etc."), para. 27 ("merchant server 112 may be a point-of-sale system, such as legacy point-of-sale systems used by service providers for initiating and processing financial transactions"), para. 28 ("traditional four party payment processing system"), para. 29 ("suitable network types and configurations will be apparent to persons having skill in the relevant art"), para. 31 ("mobile device 110 may include a reading unit 202, a processing unit 204, a transmitting unit 206, a receiving unit 208, a display unit 118, and an input unit 210"), para. 32 ("reading unit 202 may be any type of device suitable for reading the machine-readable code 108, such as a camera or other

imaging device, or wireless RF, magnetic field reader, etc."), *id.* ("processing unit 204 may be configured to decode"), para. 33 ("display unit 118 may be any type of display suitable for displaying . . ."), para. 34 ("input unit 210 may be any type of input device suitable for performing the functions as disclosed herein, such as a keyboard, a click wheel, a stylus, a capacitive touch display, etc."), para. 38 ("[t]he databases may be configured in any type of suitable database configuration . . . [s]uitable configurations and database storage types will be apparent to persons having skill in the relevant art"), para. 74 ("mobile device 110 . . . may be implemented in the computer system 800 using hardware, software, firmware, non-transitory computer readable media having instructions stored thereon, or a combination thereof and may be implemented in one or more computer systems or other processing systems"), para. 77 ("it will become apparent to a person skilled in the relevant art how to implement the present disclosure using other computer systems and/or computer architectures"), and para. 78 ("[p]rocessor device 804 may be a special purpose or a general purpose processor device").

The Appellants have also argued that the claimed methods and systems use computer technology to provide improved methods and systems (Reply Br. 9–11). According to the Appellants, the combined claim elements provide improvements to existing technologies, such as "improving the consumer experience," "and have added convenience to consumers and merchants," and "provide for a more fulfilling consumer experience" (Reply Br. 9–11).

Unlike the cases cited by the Appellants, the purported improvements here are not solutions to problems specifically arising in the realm of

computer networks. Rather, as discussed above, the claimed invention uses conventional components to improve the consumer experience during a transaction and does not "improve the functioning of the computer itself or effect an improvement in any other technology or technical field." *Alice*, 134 S. Ct. at 2351. For example, the mobile device may be "any type of mobile communication device suitable for performing the functions disclosed herein as will be apparent to persons having skill in the relevant art, such as a cellular phone, smart phone, tablet computer, netbook computer, laptop computer, etc." (Spec. para. 24). The merchant server "may be a server configured to perform the functions as disclosed herein . . . such as legacy point-of-sale systems used by service providers for initiating and processing financial transactions" (See Spec. para. 27). The processing server processes transactions "using systems and methods that will be apparent to persons having skill in the relevant art, such as the traditional four party payment processing system" (Spec. para. 28). In other words, the focus of the Appellants was not on an improved mobile device or an improved server. Nor do the claims attempt to solve "a challenge particular to the Internet." *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256–57 (Fed.Cir.2014); *cf. Intellectual Ventures I* LLC v. Capital One Bank (USA) 792 F.3d 1363, 1371 (because the patent claims at issue did not "address problems unique to the Internet, ... *DDR* has no applicability.").

We find that the claims are directed to processing and authenticating transaction details and sharing consumer experiences that can be implemented using only a generic computer system performing generic functions.

For these reasons the rejection of independent claim 1 is sustained.
Claim 9 is directed to similar subject matter and the rejection of this claim is
sustained for these same reasons.

We reach the same conclusion as to independent system claims 16 and
24. Here, as in *Alice*, "the system claims are no different in substance from
the method claims. The method claims recite the abstract idea implemented
on a generic computer; the system claims recite a handful of generic
computer components configured to implement the same idea." *Alice* 134 S.
Ct. at 2351. "[T]he mere recitation of a generic computer cannot transform a
patent-ineligible abstract idea into a patent-eligible invention. Stating an
abstract idea 'while adding the words 'apply it' is not enough for patent
eligibility." *Id.* at 2358 (quoting *Mayo*, 132 S. Ct. at 1294).

The Appellants have provided the same arguments for the remaining
claims and the rejection of these claims is accordingly sustained as well.

Rejection under 35 U.S.C. § 102(b)

The Appellants argue that the rejection of claims 9 and 24 is improper
because, *inter alia*, the rejection cites disparate portions of Elliott and the
cited portions fail to disclose the claim limitation "transaction details for a
financial transaction" including "a stage identifier" (App. Br. 7–9; Reply Br.
11–14).

In contrast, the Examiner has determined that the rejection of record is
proper, and the above limitations are found in Elliott at paragraphs 35, 37,
38, 42, 43, 46, 115, 117, 119, 121, and Fig. 10B (Ans. 4–6; *see also* Final
Act. 4, 5, 11). According to the Examiner, in light of paragraph 45 of the
Specification, the claimed "stage identifier" broadly encompasses an

10

"identifier used to identify content in the database." The Examiner finds the "stage identifier" of claim 9 in the "alphanumeric character" disclosed at paragraph 37 of Elliott (Ans. 5–6).

We agree with the Appellants. Paragraph 45 of the Specification discloses that "the stage identifier 408 *may be used* to identify content in the content database 116" (emphasis added). However, the plain language of the phrase "stage identifier" requires an identifier that identifies a stage, viz., a stage of the financial transaction. Although the Specification discloses that the stage identifier may also be used to determine content for distribution, it must foremost — as its name implies — identify a stage. Here, the "alphanumeric character" disclosed in paragraph 37 of Elliott identifies a "record in the database containing information about a particular product" but does not identify a stage of a transaction. Therefore, the Examiner's interpretation of "stage identifier" as reading on the "alphanumeric character" in Elliott is unreasonably broad and the rejection fails to specifically show a "stage identifier" as claimed. We have also reviewed the other cited portions of Elliott and although they disclose that a transaction includes different stages (e.g., checkout) we do not see that they disclose a "stage identifier" as required by claim 9.

For these reasons, the rejection of claim 9 and the rejections of its dependent claims are not sustained. Independent claim 24 contains a similar limitation and the rejection of this claim and the rejections of its dependent claims are not sustained for the same reasons.

Rejection under 35 U.S.C. § 103(a)

The Appellants argue that the rejection of claim 1 is improper because in the rejection of record the cited prior art fails to disclose limitations [1] and [2] (App. Br. 11–14; Reply Br. 18–22). According to the Appellants, Elliott discloses that "the location of products in the store are transmitted to the handheld device in a different fashion, by the product server 406, and *not* encoded in the bar codes" (*id.* at 12) and "there is no decoding of a location identifier from the bar code in Elliott, as recited in the present claims" (*id.* at 13).

In contrast, the Examiner has determined that the cited claim limitations are shown in Figures 3 and 10B and at paragraphs 6, 33, 35, 37, 46, 56, 70, 75, 94, 101, and 115 of Elliott (Final Act. 14–15). The Examiner interprets the claimed "machine-readable code" as including "software instructions to be executed on a machine with included instructions (encoded) with location identifiers" (Ans. 10). According to the Examiner, "[d]ata does not move unless encoded to do so." (Final Act. 6).

We agree with the Examiner.

Claim 1 does not recite a bar code. Therefore, the Appellants' arguments are not commensurate with the scope of the claim. As the Appellants point out, Elliott discloses transmitting a product location to a hand-held device from a product server. Elliot at paragraph 37 for instance discloses a location field **316**. A person of ordinary skill in the art would understand that a transmission from a server to another device requires encoding the data in a machine-readable format for transmission, and then decoding the received data. Nothing in claim 1 requires any particular type of encoding or decoding.

12

The Appellants also argue that "the location identifier corresponds to a physical location" (App. Br. 11) (citing paras. 26 and 32 of the Specification). But Elliott discloses this. For example, paragraph 101 of Elliott discloses "a graphical representation of a particular aisle may be shown and the products on the shopper's list which are in this aisle may be identified by highlighting or some other indicia" and "icons **906, 907** and **908** are associated with the products on the shopping list." It is clear that the icons disclosed in Elliott correspond to physical locations. Thus, the Appellants have not persuasively explained how the indicia of a product location transmitted by a server to a hand-held device in Elliott is not "a machine-readable code encoded with at least a location identifier."

In the Reply Brief, Appellants argue that the Examiner's interpretation is incorrect because Appellants' Specification "provides a thorough definition of the machine-readable code" and "explicitly states that the machine-readable code 108 'may be a bar code'" (Reply Br. 19) (citing para. 32 of the Specification). We do not agree. Limitations from the Specification are not imported into the claims. *See Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.").

Accordingly, for the foregoing reasons, we do not find the Appellants' arguments persuasive as to error in the rejection. The rejection of claim 1 is sustained. The Appellants have presented the same arguments for the

remaining claims and the rejection of these claims is accordingly sustained as well.

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1–30 under 35 U.S.C. § 101 as being directed to nonstatutory subject matter.

We conclude that the Appellants have shown that the Examiner erred in rejecting claims 9, 12, 14, 15, 24, 27, 29, and 30 under 35 U.S.C. § 102(b) as being anticipated by Elliot.

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1–8, 10, 11, 13, 16–23, 25, 26, and 28 under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision to reject claims 1–30 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED